



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2004

Mr. Leonard Reese  
Assistant Director and General Counsel  
Texas Legislative Council  
P.O. Box 12128  
Austin, Texas 78711-2128

OR2004-5236

Dear Mr. Reese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203066.

The Texas Legislative Council (the "council") received a request for correspondence between the council and a named legislator during a specified time period. The requestor later clarified his request to exclude correspondence relating to general computer issues, resolutions drafted by the council, and the legislator's requests for drafts of legislation. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.106, 552.107, 552.109, 552.111, and 552.137 of the Government Code. You also claim that release of a portion of the requested information may implicate the proprietary interests of third parties under section 552.110 of the Government Code, although you take no position as to whether the information is so excepted. You state that you notified the implicated third parties of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 323.017 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute. Section 323.017 of the Government Code provides:

Communications, including conversations, correspondence, electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the council that relate to a request by the official for information, advice, or opinions from an assistant or employee of the council are confidential. Information, advice and opinions given privately by an assistant or employee of the council to a member of the legislature, or the lieutenant governor, acting in the person's official capacity, are confidential. However, the member or lieutenant governor may choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies, and such a disclosure does not violate the law of this state.

Gov't Code § 323.017. You inform us that the submitted documents consist of communications between a member of the legislature in his official capacity and employees of the Texas Legislative Council that contain the employees' advice and opinion on specific matters. Based on your representations and our review of the records at issue, we find that the submitted communications are confidential under section 323.017 and must therefore be withheld under section 552.101. As we are able to make this determination, we do not address your remaining arguments.

You ask this office to issue the council a previous determination for section 323.017 information. We decline to issue a previous determination for section 323.017 information at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 203066

Enc. Submitted documents

c: The Honorable Ron Wilson  
State Representative  
Westbury Square Professional Building  
5322 West Bellfort, Suite 104  
Houston, Texas 77035  
(w/o enclosures)